

## **MINUTES**

### **MONTANA HOUSE OF REPRESENTATIVES 58th LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON JUDICIARY**

**Call to Order:** By **CHAIRMAN JIM SHOCKLEY**, on January 27, 2003 at 8 A.M., in Room 137 Capitol.

#### **ROLL CALL**

**Members Present:**

Rep. Jim Shockley, Chairman (R)  
Rep. Paul Clark, Vice Chairman (D)  
Rep. Jeff Laszloffy, Vice Chairman (R)  
Rep. George Everett (R)  
Rep. Tom Facey (D)  
Rep. Steven Gallus (D)  
Rep. Gail Gutsche (D)  
Rep. Christopher Harris (D)  
Rep. Michael Lange (R)  
Rep. Bruce Malcolm (R)  
Rep. Brad Newman (D)  
Rep. Mark Noennig (R)  
Rep. John Parker (D)  
Rep. Holly Raser (D)  
Rep. Diane Rice (R)  
Rep. Scott Sales (R)  
Rep. Ron Stoker (R)  
Rep. Bill Thomas (R)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** John MacMaster, Legislative Branch  
Lisa Swanson, Committee Secretary

**Please Note.** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing & Date Posted: HB 282, 1/22/2003; HB 284,  
1/22/2003; HB 281, 1/22/2003; HB  
247, 1/22/2003

Executive Action: None



**HEARING ON HB 282**

**Sponsor:** REP. CINDY YOUNKIN, HD 28, Bozeman

**Opening Statement by Sponsor:**

REP. YOUNKIN opened on HB 282 stating this bill creates the offense of vehicular homicide. She explained it is inappropriate to use negligent homicide when a person who is drunk kills someone with their vehicle. She emphasized that a person who kills someone while driving under the influence (DUI) is vehicular homicide and not negligence. She emphasized this is a public policy bill which recognizes that when a person drinks and drives, they act purposely and not negligently.

***{Tape: 1; Side: A; Approx. Time Counter: 1 - 38}***

**Proponents' Testimony:**

**George Corn, Ravalli County Attorney**, supported HB 282. He stated it is an important public policy to call DUI and killing someone would be vehicular homicide. He emphasized this bill will also make it clear to the public what is and is not acceptable conduct. He stated this will be taught in driver's education classes.

***{Tape: 1; Side: A; Approx. Time Counter: 39 - 86}***

**Beda Lovitt, Montana Medical Association**, supported HB 282, stating she has lived in countries where vehicular homicide is a capitol offense.

**Bill Muhs, President of Mothers Against Drunk Drivers (MADD)**, supported HB 282. He stated his family are victims of drunk driving and that vehicular homicide should not be called negligent homicide. He cited Montana as one of five states without a vehicular homicide law.

**EXHIBIT(juh17a01)**

***{Tape: 1; Side: A; Approx. Time Counter: 80 - 152}***

**Ed Zink, Deputy County Attorney, Yellowstone County**, supported HB 282. He stated he is also a member of the DUI Task Force, a victim of a drunk driver, and that he wakes up in pain every day.

***{Tape: 1; Side: A; Approx. Time Counter: 153 - 169}***



**Susan Good, Surgical Specialties**, supported HB 282. Ms. Good stated that the surgeons work on victims of drunk drivers. She felt this bill would strengthen the DUI laws.

**John Connor, Chief Legal Counsel, Department of Justice (DOJ)**, supported HB 282.

*{Tape: 1; Side: A; Approx. Time Counter: 170 - 194}*

**Mike Barrett, Poet**, supported HB 282.

**Opponents' Testimony:** None

**Informational Testimony:** None

**Questions from Committee Members and Responses:**

**REP. RICE** asked how many fatalities have occurred between .08 and .10. **Mr. Muhs** responded 20 percent of all alcohol related fatalities are between .04 and .09. **REP. HARRIS** asked about language in the bill referring to "any trace" of a drug. **REP. YOUNKIN** responded that there are warning labels on the prescription bottles. She also stated that prosecutors have discretion. **Mr. Connor** responded that it would be a policy matter for the Committee to decide. **REP. NOENNIG** expressed his concern about the great leap from negligence to absolute liability. **REP. YOUNKIN** stated that when you take alcohol or dangerous drug and drive, you should be held to a standard of strict liability. She explained that to drink and drive is an intentional and not a negligent act.

*{Tape: 1; Side: A; Approx. Time Counter: 195 - 429}*

**Mr. Connor** stated it becomes problematic when you make refusing a BAC an absolute liability offense which does not require a mental state. He stated that the DOJ supports the bill and it is the Committee's discretion on whether they want to make it an absolute liability offense.

*{Tape: 1; Side: A; Approx. Time Counter: 430 - 515}*

The Committee asked about the difference between negligent and vehicular homicide. **Mr. Zink** stated it is offensive to victims to call it anything less than vehicular homicide. He emphasized that it is absolute liability to get behind the wheel of a vehicle impaired and to kill someone while drunk. **CHAIRMAN SHOCKLEY** asked whether the bill would be enforced. **Mr. Corn** said



absolutely; that this bill is narrowly drafted to address a serious social problem.

***{Tape: 1; Side: B; Approx. Time Counter: 1 - 102}***

**REP. CLARK** stated his concern with the language, "any measurable amount" of a drug. He worried that cough syrup for a common cold could put you at risk of being charged with vehicular homicide should you get in an accident. **Mr. Connor** stated that he was taking prescription medications which reacted against each other. He fell asleep at the wheel and thankfully caused no harm to anyone. He stated that under this bill, he could have been charged. He added that he would be open to amending that part of the bill.

***{Tape: 1; Side: B; Approx. Time Counter: 103 - 153}***

**CHAIRMAN SHOCKLEY** gave a scenario about a guy driving home from work with a six pack of beer. A guy turned in front of him and three people were killed. It was determined that the person in the other car which did the abrupt U-turn caused the accident and that it was not the guy's fault. He asked Mr. Connor under those facts, would the guy be charged under this bill. **Mr. Connor** stated that he would be charged because he drank and drove resulting in death to another. **CHAIRMAN SHOCKLEY** stated that if it were a civil trial, the plaintiff would have to show the guy caused the accident.

***{Tape: 1; Side: B; Approx. Time Counter: 154 - 200}***

**REP. NOENNIG** asked about a situation where person A is in an accident, similar to the previously discussed scenario, and it is absolutely not A's fault. Would he be prosecuted? **Mr. Zink** stated that he has prosecuted drunk drivers who were the actual victims in an accident. He stated that when a person chooses to drink and drive, they are exposed even if it is not their fault. He cited 45 states which have vehicular homicide as an absolute liability defense.

***{Tape: 1; Side: B; Approx. Time Counter: 201 - 310}***

**Closing by Sponsor:**

**REP. YOUNKIN** closed on HB 282. She stated she would not have a problem if the Committee amended page 1, subsection (c) or took it out altogether. She explained that "any measurable amount" is a pretty high standard. She felt that probably should be changed. She reiterated that this is a public policy bill which declares that Montana will not tolerate drinking and driving



anymore. She emphasized that the primary goal is to address the problem of drunk drivers.

***{Tape: 1; Side: B; Approx. Time Counter: 311 - 361}***

**HEARING ON HB 247**

**Sponsor:** REP. CHRISTOPHER HARRIS, HD 30, Bozeman

**Opening Statement by Sponsor:**

**REP. HARRIS** opened on HB 247 stating this bill would remove vagrancy as a crime. He stated the vagrancy laws are unconstitutional and void for vagueness. He explained that they violate the Fourth Amendment as an unreasonable search and seizure and that they punish status, not behavior. He gave an example of a 53-year-old woman who was arrested in Bozeman last July, 2002 for vagrancy. The case was dismissed in January, 2003. The judge stated it was a medieval and unconstitutional prosecution. **REP. HARRIS** said this bill would wipe the statute off the books.

***{Tape: 1; Side: B; Approx. Time Counter: 362 - 446}***

**Proponents' Testimony:**

**John Connor, Chief Legal Counsel, Department of Justice (DOJ)**, supported HB 247. He stated the DOJ has a responsibility to defend the constitutionality of enactments passed by the legislature or local governments. He posed that this bill makes people criminals for their state of being and that would be unconstitutional. He agreed with **REP. HARRIS** that the bill's intent is to make the criminal act of vagrancy prohibitive.

***{Tape: 1; Side: B; Approx. Time Counter: 446 - 510}***

***{Tape: 2; Side: A; Approx. Time Counter: 1 - 37}***

**Al Smith, MTLA**, supported HB 247 stating this bill is good public policy.

**Beth Brenneman, ACLU**, supported HB 247. She stated a great society does not criminalize poverty, or mental illness.

***{Tape: 2; Side: A; Approx. Time Counter: 38 - 56}***

**Opponents' Testimony:**

**Alec Hansen, League of Cities and Towns**, opposed HB 247 because he thinks it will have unintended consequences. He stated his



concern of passing a general prohibition against the crime of vagrancy. He explained that the vagrancy case in Bozeman was dismissed. The Court ruled that unless the vagrancy statute is narrowly drawn, it would be unconstitutional. He stressed that this bill may affect legitimate laws intended to protect the public such as prohibiting door-to-door solicitation or aggressive panhandling. He stated a blanket prohibition on vagrancy may hinder law enforcement in protecting the public and in maintaining peace and order.

***{Tape: 2; Side: A; Approx. Time Counter: 57 - 103}***

**J.D. LYNCH, Butte**, opposed HB 247. He stated that local governments must ensure that people are not living on the streets and the criminality element of this law addresses that.

**Harold Blatty**, opposed HB 247.

**Informational Testimony:** None

**Questions from Committee Members and Responses:**

**REP. GUTSCHE** asked about the opponent's concerns that this bill could affect cities' and towns' abilities to enact other laws. **Mr. Connor** didn't think that would be a real concern. He stated this bill just relates to status as opposed to conduct. **REP. CLARK** asked about vagrancy in Montana and how it is dealt with by local officials. **Mr. Connor** responded that vagrants in Montana are generally not arrested. **REP. CLARK** asked about loitering. **Mr. Connor** responded that loitering is just being there and that legally Montana's Supreme Court would not favor it.

**Closing by Sponsor:**

**REP. HARRIS** closed on HB 247. He stated that officers must enforce the laws that are on the books and would be remiss in their duties if they did not. He stated this bill would get rid of the unconstitutional crime of vagrancy.

***{Tape: 2; Side: A; Approx. Time Counter: 104 - 291}***

**HEARING ON HB 281**

**Sponsor:** **REP. SCOTT SALES, HD 27, Bozeman**



**Opening Statement by Sponsor:**

**REP. SALES** opened on HB 281 stating that this bill would give more latitude to the Board of Regents. He stated this would amend Article V, Section 9, of the Montana Constitution. It would eliminate the requirement that the Board of Regents of Higher Education appoint a Commissioner of Higher Education.

**{Tape: 2; Side: A; Approx. Time Counter: 292 - 320}**

**Proponents' Testimony:**

**Ken Nordvedt, Bozeman**, supported HB 281. He stated that he had over 30 years connected with higher education. He explained that the Montana Constitution states that the Board of Regents is appointed by the Governor and that it must hire a Commissioner. He stated that Montana could do without a constitutional mandate requiring the Board to hire a Commissioner of Higher Education. He emphasized that insulation leads to isolation, and that we need a people who are more closely tied into the Montana University system. He stated this bill should go to the voters to decide whether Montana needs a commissioner of higher education.

**{Tape: 2; Side: A; Approx. Time Counter: 321 - 453}**

**Mike Barrett, Poet**, supported HB 281, stating that the Board should keep the Commissioner but that he should be forced to work twenty hours a week in a fast food restaurant.

**{Tape: 2; Side: B; Approx. Time Counter: 1 - 45}**

**Opponents' Testimony:**

**SENATOR BEA MCCARTHY, SD 29**, opposed HB 281. She stated that the Constitution clearly diagrams that the Board and the University work under the Commissioner. She stated the Commissioner also acts as a referee for the Board and the University to ensure the assets are equally or equitably distributed for competing programs.

**{Tape: 2; Side: B; Approx. Time Counter: 46 - 86}**

**Richard Roehm, Chair of the Board of Regents**, opposed HB 281, stating that we are an 850 million dollar corporation. He stated that it makes sense to have a knowledgeable CEO running the higher education system. It is not an ordinary system and that the Commissioner speaks and acts on behalf of the Board.



**{Tape: 2; Side: B; Approx. Time Counter: 99 - 130}**

**Margie Thompson, former Chairwoman of the Board of Regents,** opposed this bill. She stated the Board is about communication as well as sound facts and knowledge to give Montana the best university system possible. She stated that the Montana University System can be compared to a large business. She stated they employ 6800 full-time employees and serve 35,000 students. She posed that the Commissioner represents the State's and the students' interests and that Montana needs a unified system. **Ms. Thompson** explained that students expect, and deserve, the best. She emphasized, like any big business, it needs to be run efficiently and effectively. She stated that the system requires a qualified CEO; that to run the business without one would be equivalent to flying in a plane without a pilot.

**{Tape: 2; Side: B; Approx. Time Counter: 131 - 193}**

**Dick Crofts, Former Commissioner of Higher Education,** opposed HB 281. He stated that he served on the Board of Regents from 1986 to 1998. He explained that the Commissioner gives technical support to the Board. He emphasized that HB 281 would waste taxpayer dollars and disrupt the system. He remarked that HB 281 is not proposed or supported by the Board and is a mere distraction for the Board and the Commissioner. He pointed out that he has no agenda as he is on his way to Florida. He stated that they have the Commissioner, and jobs like that, to focus on what is good for the State and the students. He emphasized that professors have other jobs to focus on.

**EXHIBIT(juh17a02)**

**EXHIBIT(juh17a03)**

**Ed Jasmine, Montana Board of Regents,** volunteer member of the Board, opposed HB 281.

**Mark Semmens, DA Davidson, Great Falls,** opposed HB 281, stating that he is a member of the Board of Regents.

**Mike Dennison, President of University of Montana,** opposed HB 281, stating that the majority of the Board of Regents have testified that they would structure the Board the same whether or not the Constitution mandated it.

**{Tape: 2; Side: B; Approx. Time Counter: 360 - 424}**

**Geoff Gamble, President Montana State University,** opposed HB 281. He urged the Committee to table the bill. He stated that the Board of Regents would structure the office the same way so why



go through the expense. He stated the Board should be the entity to review the office if it needs reviewing.

**{Tape: 2; Side: B; Approx. Time Counter: 425 - 456}**

**Informational Testimony:** None

**Questions from Committee Members and Responses:**

**REP. RICE** asked Mr. Nordvedt about the increase in the Commissioner's salary from when he was at the University to present. **Mr. Nordvedt** stated it would be difficult to compare the increase in salary without an inflation table. **Mr. Roehm** added that the Commissioner's salary is \$140,000 a year but stated that is low in comparison to the rest of the nation. He emphasized that they are an 850 million dollar corporation which requires the expertise of a qualified CEO.

**{Tape: 2; Side: B; Approx. Time Counter: 435 - 515}**

**{Tape: 3; Side: A; Approx. Time Counter: 1 - 2}**

**REP. HARRIS** asked Mr. Nordvedt about whether the Commissioner could be carried out through the Department of Administration. **Mr. Nordvedt** responded that this is a permissive bill and he was just trying to expand people's imaginations. He explained that just because things have been done a certain way, doesn't mean they should continue when there is a better way. He stated the Commissioner should not be insulated from the people.

**{Tape: 3; Side: A; Approx. Time Counter: 3 - 36}**

**REP. HARRIS** asked President Gamble whether he was aware of any situations in which the Commissioner's office interfered with the Regents. **Mr. Gamble** replied that the Commissioner often acts as a mediator. He explained that the Commissioner provides leadership for the Board of Regents to follow. **REP. HARRIS** asked President Gamble the same question. **President Gamble** responded that his experience since 1990, is that the Commissioner's role is very important, has worked well, and should not be eliminated.

**{Tape: 3; Side: A; Approx. Time Counter: 37 - 73}**

**REP. CLARK** asked Mr. Dennison what the Commissioner does that could not be accomplished by a less centralized office. **Mr. Dennison** responded that it would be difficult for the Board to function without a centralized office. He stated the important function of the office has to do with the Board's central duty of forming and implementing policy decisions.

**{Tape: 3; Side: A; Approx. Time Counter: 74 - 104}**



**REP. LANGE** commented that the bill's intent is to allow the people of Montana to decide whether or not the Commissioner of Higher Education should be a mandated constitutional position or a decision of the Board. **REP. HARRIS** agreed. **REP. SALES** stated this bill would not change a thing; that if the Board wants a Commissioner, they can have one.

*{Tape: 3; Side: A; Approx. Time Counter: 105 - 125}*

**REP. STOKER** asked about the Commissioner's job. **Mr. Crofts** responded that the Board would not be able to do the Commissioner's job.

*{Tape: 3; Side: A; Approx. Time Counter: 125 - 158}*

**Closing by Sponsor:**

**REP. SALES** closed on HB 281. He stated this bill would give the Board a choice in whether or not to hire a Commissioner of Higher Education. He emphasized that the bill would not change that but would address whether it should be a constitutional mandate. He closed stating that he is in favor of a strong university system.

*{Tape: 3; Side: A; Approx. Time Counter: 159 - 175}*

**HEARING ON HB 284**

**Sponsor:** **REP. KIM GILLAN, HD 11, Billings**

**Opening Statement by Sponsor:**

**REP. GILLAN** opened on HB 284, stating that Montana should mandate blood alcohol content (BAC) testing for all drivers involved in a serious traffic accident. She stated that two out of five Americans will be involved in an alcohol-related crash.

*{Tape: 3; Side: A; Approx. Time Counter: 175 - 216}*

**Proponents' Testimony:**

**Bill Robinson, Emergency Physician, Bozeman Deaconess**, supported HB 281, stating that mandatory BAC testing in serious traffic accidents is important. He has been an emergency room physician for 27 years and believes this bill will help reduce the number of traffic accident resulting in serious injury or death.

**EXHIBIT** (juh17a04)



***{Tape: 3; Side: A; Approx. Time Counter: 217 - 293}***

**William Muhs, Mothers Against Drunk Drivers (MADD), Bozeman,** supported HB 281. He stated that Montana's BAC refusal rate is one of the highest in the nation. He explained that BAC testing is not currently required for survivors of serious accidents. He spoke of the importance of mandatory BAC testing and that HB 284 will help reduce alcohol related fatalities from drunk driving.

**EXHIBIT (juh17a05)**

***{Tape: 3; Side: A; Approx. Time Counter: 294 - 305}***

**Ed Zink, Deputy County Attorney, Billings,** supported mandatory BAC testing of people in car crashes. He felt that if a person had no drugs or alcohol in their system, but appeared as if they did, this bill could be exculpatory. This bill would allow law enforcement to know whether alcohol was involved.

***{Tape: 3; Side: A; Approx. Time Counter: 305 - 421}***

**George Corn, Ravalli County Attorneys Association,** supported HB 284. He emphasized that all the county attorneys in Montana support this bill.

***{Tape: 3; Side: A; Approx. Time Counter: 422 - 439}***

**Spook Stang, Motor Carriers of Montana,** supported HB 284 stating that if a driver refused a BAC, they would automatically lose their commercial driver's license.

**Opponents' Testimony:** None

**Informational Testimony:** None

**Questions from Committee Members and Responses:**

**REP. HARRIS** asked Mr. Zink about amending the bill to cover collisions which are serious, perhaps property damage, but no injuries. **Mr. Zink** felt that would be a good amendment.

**CHAIRMAN SHOCKLEY** asked Mr. Corn whether this bill codifies existing law. **Mr. Corn** responded that this bill would mandate BAC testing and avoid the warrant requirement. He emphasized that driving is a statutory privilege and not a right.

***{Tape: 3; Side: B; Approx. Time Counter: 3 - 34}***



**REP. GALLUS** asked about the need for a warrant and whether there is case law allowing evidence to be seized without a warrant.

**Mr. Corn** responded that most attorneys believe that a warrant is required. **REP. GALLUS** stated that a 1995, 9th Circuit case, held that an arrest does not have to occur for an officer to obtain a blood test without consent or a warrant. He stated the blood was drawn during emergency medical treatment. He also stated that a 1986 Montana case, State v. Bellinger, held that police may seize evidence if there is a risk it will disappear before a warrant can be issued.

***{Tape: 3; Side: B; Approx. Time Counter: 54 - 90}***

**Closing by Sponsor:**

**REP. GILLAN** closed on HB 284 stating that the objective of mandatory testing is to help with Montana's problem of drunk driving. She stated this bill would give law enforcement one more tool to help keep drunk drivers off the road.

***{Tape: 3; Side: B; Approx. Time Counter: 191 - 213}***



**ADJOURNMENT**

Adjournment: 12 P.M.

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REP. JIM SHOCKLEY, Chairman

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LISA SWANSON, Secretary

JS/LS

**EXHIBIT** (juh17aad)